ADMINISTRATIVE POLICY

STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
EMPLOYMENT STANDARDS

TITLE: **DEDUCTIONS FROM WAGES, FAILURE TO PAY WAGES, REBATE OF WAGES, PENALTIES**

NUMBER: **ES.B.2**

REPLACES:

CHAPTER: **RCW 49.52.050, .060, .070**

This policy pertains to deductions from wages of current workers during ongoing employment. For a complete discussion of deductions from termination wages, **see ES.B.1.**

RCW 49.52.060—Deductions from Wages During Employment

RCW 49.52.060 sets forth the conditions under which an employer may withhold or divert a portion of an employee's wages during employment. This statute applies to all currently employed employees of the employer and places conditions on deductions from wages.

An employer may withhold or deduct from the wages of an employee during ongoing employment *only* when the provisions set forth in RCW 49.52.060 are met and provided that the employer derives no financial benefit and the deduction is openly and clearly recorded in the employer's books. The provisions, summarized as follows and explained clearly below, are:

- When the withholding is required by state or federal law; or
- When a deduction has been expressly authorized in writing in advance by the employee for a lawful purpose accruing to the benefit of the employee; or

- When the deduction is for medical, surgical, or hospital care or service, pursuant to any rule or regulation.

If the above requirements are not met, the deduction from wages may not be legally withheld.

"Required by state or federal law" is interpreted to mean tax deductions that an employer is required to deduct under state and federal statutes. Withholding for the employee's share of Social Security, workers' compensation premiums[1] and other federal, state or local taxes, or state ordered garnishments.[2] No withholding can be made for any tax, which the law requires to be borne by the employer.[3] No employee authorization is required when state or federal law requires the withholding.

If the employer is required by court order to pay a portion of an employee's wages to a third party under garnishment, wage attachment, trustee process or bankruptcy proceeding, deductions from wages are permissible as long as neither the employer nor anyone acting on its behalf derives any profit or benefit from the transaction.

"Expressly authorized in writing, in advance by the employee" is interpreted to mean that the employee and employer must enter into a written agreement, allowing the employer to withhold the wages. This agreement must be signed by the employee in advance of the deduction. Oral agreements are not recognized and are not binding upon the employee.

"Employer derives no financial benefit" is interpreted to mean that neither the employer nor anyone acting on the employer's behalf, directly or indirectly, derives any gain or profit from the deduction.

Deductions must be clearly reflected in the employer's records. When an employee authorizes a deduction to be made from his or her wages, the deduction must be openly and clearly recorded in the employer's books and records.

Deductions under WAC 296-126-025 may be taken only from termination wages. WAC 296-126-025 allows for deductions in certain situations. None of the circumstances set out in WAC 296-126-025 would accrue to the benefit of the employee and, therefore, would not be an allowable deduction under RCW 49.52.060. Such

[1] RCW 51.16.140 regulates workers' compensation premiums and allows an employer to deduct one-half of the medical aid premium plus one-half of the supplemental fund premium.

[2] RCW 6.27.095 provides that the garnishee of a writ for a continuing lien on earnings may deduct a processing fee from the remainder of the obligor's earnings after withholding the required amount under the writ.

[3] RCW 50.24.010 regulates unemployment compensation and it is unlawful for an employer to deduct any wages for unemployment compensation premiums. This statute clearly requires the employer to pay such premiums in their entirety.

deductions may be permissible under RCW 49.48.010, which discusses termination wages. **See E.S.B.1** for further discussion of deductions upon termination.

RCW 49.52.050—Rebate of Wages

An employer is guilty of a misdemeanor if it is proven, beyond a reasonable doubt, that an employer:

- Collects or receives from an employee a rebate of any wages previously paid; or
- Willfully and with intent to deprive an employee of any part of wages, pays a lower wage than obligated to pay by statute, contract or ordinance; or
- Makes or causes anyone else to make a false entry in any books or records to show that an employee was paid more than he or she actually received; or
- Fails to show openly and clearly any rebate of or deduction from any employee's wages in books and records; or
- Receives or accepts any false receipt for wages from any employee.

This statute includes kickbacks, which is when a deduction is a "ruse" by the employer to deprive the worker of actual wages. This would include a disguised attempt by the employer to show a deduction that is actually false.

A misdemeanor is a criminal penalty and only the appropriate county prosecutor can initiate criminal charges against an employer. The department, or the Office of the Attorney General, cannot independently seek or enforce a criminal penalty but may refer a case to the appropriate county prosecutor to do so.

However, RCW 49.52.070 allows a civil action, which can be brought by the department or by the individual workers, against an employer in the event of a rebate of wages or to address intentional underpayment of wages. According to the Washington State Supreme Court's decision in *SPEEA v. Boeing*, 139 Wn.2d 824 (2000), a cause of action for unpaid agreed wages must be brought under RCW 49.52.050 and RCW 49.52.070, rather than under the Washington Minimum Wage Act (unless the claim is for unpaid overtime). The department has the authority to bring such actions on the worker's behalf.

Civil Liability for Double Damages--RCW 49.52.070

This statute allows an employee to file a civil action for double damages and attorney fees and costs when an employer has violated RCW 49.52.050(1), rebate of wages, or RCW 49.52.050(2), intentional underpayment of wages.

A willful underpayment of wages occurs when the employer knowingly, or volitionally, underpays the worker. Willfulness will not be found if there is a bona fide dispute about the employee's entitlement to wages or if the employer's failure to pay wages is due to a

legitimate error or inadvertence. An employer's financial inability to pay may not defeat a finding of willfulness. The above tests come from the Washington State Supreme Court case of *Shilling v. Radio Holdings*, 136 Wn.2d 152 (1998). If the underpayment is not willful, even if the employee is successful in recovering unpaid wages, the employee may not be awarded double damages or attorney fees and costs. Whether an underpayment of wages is willful is a question of fact that must be analyzed in each individual case.